person and the money found would be returned to them. They accordingly pleaded guilty. They were fined $5 each but the sum of $2,589.05 found was ordered to be forfeited.

Held: it was irregular and improper for a magistrate to compromise with accused persons that if they pleaded guilty he would impose on each a small fine and that accordingly the conviction and sentence must be quashed.

Case referred to:—

(1) *R.* v. *Sussex Justices, ex parte McCarthy* [1924] 1 K.B. 256.

CRIMINAL REVISION.

C. T. Wong for 10 accused.

Bobby Tan (A. S. P.) for the Public Prosecutor.

Lee Hun Hoe J.C.: As a result of certain information I came to have knowledge of the irregularity in the conduct of this case. The court clerk of the Sibu District Court was called and gave evidence.

On 25th July, 1964 thirty three accused persons were brought to the Sibu District Court to be charged for playing a prohibited game of "Pai Kow" under subsection (2) of section 1 of the Gambling Ordinance. Before the hearing the learned magistrate went to see the court clerk and instructed him to tell the accused persons who were then in the court that if they pleaded guilty he (the learned magistrate) would impose a fine of $5.00 on each accused person and the money found would be returned to them. The court clerk then went into court and as all the accused persons understood Foochow he spoke to them in Foochow. He then returned to his office and informed the learned magistrate that the accused persons agreed to plead guilty. It would appear that Inspector Gines who was conducting the prosecution was not aware of the matter. The learned magistrate then went into court. The court clerk acted as an interpreter. The charge was read and explained to the accused persons and they pleaded guilty and each was fined $5.00. Inspector Gines drew the learned magistrate's attention to certain provisions of the said Ordinance. Consequently the latter ordered the sum of $2,589.05 to be forfeited to the Government. From this order ten of the accused persons appealed. Mr. Wong represented them. They have now withdrawn their appeal.

It is irregular and improper for a magistrate to compromise with accused persons that if they should plead guilty he would impose on each a small fine and return the money found. It is a dangerous course to adopt. Such conduct tends to shake the faith that is reposed in the stability and the good sense of the courts that administer justice in criminal cases.

It is not suggested that the learned magistrate was in any way unfair. There were thirty three accused persons and each probably was ready to pay a small fine and be on his way. It may well be that the learned magistrate thought such a course would be convenient to all including himself. Let me quote the classical words of Lord Hewart C.J. in *R.* v. *Sussex Justices, Ex parte McCarthy* (1) that it is

> "of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done."

In another passage in the same case he said:

> "Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice."

In my opinion in this case a miscarriage of justice has manifestly been occasioned. It cannot be said that justice is manifestly and undoubtedly seen to be done when a magistrate compromised with accused persons to impose a certain small fine and return money found if accused persons agreed to plead guilty behind the back of the prosecuting officer. Accordingly the conviction and sentence must be quashed. Any fine if paid must be refunded forthwith. I order a new trial on the same charge before another magistrate.

New trial ordered.

GOLDEN HOPE RUBBER ESTATE LTD. v. MUNIAMMAH & ORS.

[A.C.J. (Gill J.) September 12, 1964]

[K.L. — Civil Appeal No. 10 of 1963]

Workmen's Compensation — Accident arising out of and in the course of employment — Meaning of "accident" — Death from disease accelerated by act of exertion in course of employment — Workmen's Compensation Ordinance, 1952, s. 4.

This was an appeal against the award of compensation in respect of the death of a field worker employed by the appellants. The arbitrator under the Workmen's Compensation Ordinance found that the deceased was working with other labourers in cleaning a drain in the estate with a changkol and that after half an hour in the course of the work he suddenly collapsed and died. The medical evidence was that death was caused by heart failure and that the exertion of work had contributed to the death of the deceased. The arbitrator held that the death was an accident arising out of and in the course of the deceased's employment and he made an award of compensation in the sum of $2,880. The appellants appealed against this award.

Held: where the death of a person from disease is accelerated by some particular act of exertion, the death can properly be said to be caused by an accident and where the contributory cause is furnished by and in the course of an injured workman's employment, he is entitled to compensation under the Ordinance.

Cases referred to:—

(1) *Fenton* v. *Thorley & Co. Ltd.* [1903] A.C. 443

(2) *Stewart* v. *Wilsons & Clyde Coal Co. Ltd.* (1902) 5 Fraser 120.

(3) *Clover, Clayton & Co. Ltd.* v. *Hughes* [1910] A.C. 242.

(4) *Brintons Ltd.* v. *Turvey* [1905] A.C. 230.

(5) *Ismay, Imrie & Co.* v. *Williamson* [1908] A.C. 437.

(6) *Innes (or Grant)* v. *G. & G. Kynoch* [1919] A.C. 765.

(7) *Charles Burrell & Sons Ltd.* v. *Selvage* (1921) 90 L.J.K.B. 1340; [1921] All E.R. Rep. 122.

(8) *Pyrah* v. *Doncaster Corp.* [1949] 1 All E.R. 883.

(9) *Roberts* v. *Dorothea State Quarries Co. Ltd.* [1948] 2 All E.R. 201, 205 & 206.

(10) *Steel* v. *Cammell Laird & Co. Ltd.* [1905] 2 K.B. 232.

(11) *Broderick* v. *London County Council* [1908] 2 K.B. 807.

(12) *Eke* v. *Harta Dyke* [1910] 2 K.B. 677.

(13) *Evans* v. *Dodd* (1912) 5 B.W.C.C. 305.

(14) *Ormond* v. *C.D. Holmes & Co. Ltd.* [1937] 2 All E.R. 795.

(15) *Marshall* v. *East Holywell Co.* and *Gorley* v. *Blackworth Collieries* (1905) 93 L.T.R. 360.

(16) *Coe* v. *Fife Coal Co. Ltd.* (1909) 2 B.W.C.C. 8.

(17) *Walker* v. *Hockney Bros.* (1909) 2 B.W.C.C. 20.

(18) *Black* v. *New Zealand Shipping Co. Ltd.* (1913) 6 B.W.C.C. 720.

(19) *Pyper* v. *Manchester Liners Ltd.* [1916] 2 K.B. 891.

(20) *Barnabas* v. *Bersham Colliery Co.* (1910) 3 B.W.C.C. 216; 4 B.W.C.C. 119; 34 Digest 325, 2656.

(21) *Hawkins* v. *Powell's Tillery Steam Coal Co. Ltd.* (1911) 4 B.W.C.C. 178.

(22) *Farner* v. *Stafford, Allen & Sons Ltd.* (1911) 4 B.W.C.C. 223.

(23) *Beaumont* v. *Underground Electrict Railways Company of London Ltd.* (1912) 5 B.W.C.C. 247.

(24) *Maxwell* v. *Ruabon Coal and Coke Co. Ltd.* (1916) 10 B.W.C.C. 138.

(25) *Muscroft* v. *Stewarts and Lloyds Ltd.* (1928) 21 B.W.C.C. 274.

(26) *Hayman* v. *Pensford and Bromley Collieries (1921) Ltd.* (1932) 25 B.W.C.C. 37.

(27) *Lancaster* v. *Blackwell Colliery Co. Ltd.* (1919) 12 B.W.C.C. 400.

(28) *Doughton* v. *A. Hickman Ltd.* (1913) 6 B.W.C.C. 77.

(29) *McArdle* v. *Swansea Harbour Trust* (1916) 85 L.J.K.B. 733.

(30) *McFarlane* v. *Hutton Brothers (Stevedores) Ltd.* [1926] All E.R. Rep. 246; 20 B.W.C.C. 222; 96 L.J.K.B. 357.

(31) *Falmouth Docks and Engineering Co.* v. *Treloar* [1933] A.C. 481.

(32) *Partridge Jones and John Paton Ltd.* v. *James* [1933] A.C. 501; 26 B.W.C.C. 277.

(33) *Lochgelly Iron and Coal Co.* v. *Walkenshaw* 62 C.L.R. 333; (1933) 28 B.W.C.C. 230, 234.

(34) *Whittle* v. *Ebbw Vale Steel Iron & Co. Ltd.* [1936] 2 All E.R. 1221, 1230.

(35) *Moore* v. *Tredegar Iron & Coal Co. Ltd.* (1938) 31 B.W.C.C. 359.

(36) *Oates* v. *Earl Fitzwilliam's Collieries Co.* [1939] 2 All E.R. 498, 502.

(37) *Miller* v. *Carntyne Steel Castings Co. Ltd.* [1935] S.C. 20; 27 B.W.C.C. Supp. 101.

(38) *Hetherington* v. *Amalgamated Collieries of W.A. Ltd.* (1939) 62 C.L.R. 317.

(39) *Adelaide Stevedoring Co. Ltd.* v. *Forst* (1940) 64 C.L.R. 538, 563.

(40) *Trim Joint District School Board of Management* v. *Kelly* [1914] A.C. 667, 684.

CIVIL APPEAL.

M. Shankar for the appellants.

P. G. Lim (Miss) for the respondents.

Cur. Adv. Vult.

Gill J.: This is an appeal against an award of compensation made by the President of the Sessions Court at Telok Datoh, sitting as an arbitrator under section 30 of the Workmen's Compensation Ordinance, 1952, in respect of the death of a male Indian named Manickam son of Ganggan (whom I shall hereafter call "the deceased"). The appellants are the owners of the estate in which the deceased was employed since his childhood as a field worker, his principal duties being to dig new drains and clear old ones. The respondents (applicants in the proceedings before the arbitrator), in whose favour the award was made, are the widow and minor children of the deceased.

The award was made under section 4(1)(a) of the said Ordinance, which makes an employer liable to pay compensation if in any employment to which the Ordinance applies "personal injury by accident arising out of and in the course of the employment is caused to a workman." Section 4(5) of the Ordinance provides that for the purpose of the Ordinance "an accident arising in the course of a workman's employment shall be deemed, in the absence of evidence to the contrary, also to have arisen out of that employment."

The appeal is brought on a certificate dated 23rd July, 1963, issued by this court under section 39(2) of the Ordinance, that the decision of the arbitrator involves a question of law which it is desirable in the public interest to have determined by the High Court. In other words, the appeal is on a question of law and not on facts. It was contended by Mr. Shankar on behalf of the appellants that this appeal, like any other appeal from a subordinate court in relation to a civil proceeding, is by way of rehearing. That contention is valid only in so far as it relates to any question or questions of law involved. The position is that it is for the applicant to prove personal injury caused by an accident. But when personal injury and its cause or causes have been ascertained, the question whether such cause or causes amount to an accident within the meaning of the Ordinance is a question of law on which the

decision of the arbitrator is not final; and is not a question of fact on which his decision is not open to appeal. Thus, the fact that there is no or not sufficient evidence to support the finding of the arbitrator is a question of law. But the fact that the appellate court may reach a different conclusion on the evidence before the arbitrator is no ground for interfering with his decision, unless the evidence or the legitimate inference or inferences to be drawn from that evidence do not justify his conclusion. As will be observed from some of the cases to which I shall refer in the course of my judgment, the courts have always set aside an award when there was no evidence to support it, or made an award where it was refused when there was ample evidence in support of it. This, of course, is done on the ground that whether or not there is evidence to support an award is a question of law. Thus the appeal has to be dealt with on the basis that it is an appeal on a question of law.

The facts of the case are not in dispute, although there is a great deal of controversy on the medical evidence. The deceased reported for muster as usual at 6 a.m. on 18th March, 1961 when he appeared to be normal. The work allotted to him by his *kangany* named Sinniah, under whose supervision he and the other Indian male weeders worked, was to clear the weeds from inside a drain and to throw them on top of the drain. After muster the deceased proceeded to field No. 14 and started working inside a drain from about 6.30 a.m. Sinniah saw him digging the drain with a changkol when he went off with four other labourers to lay a culvert. Three female Chinese weeders named Tan Sooi Nyeo, Chew Kwee Moy and Chu Mi Moy, who worked under the supervision of a Chinese *kepala* named Soo Kim Hock, were clearing the grass on both sides of the drain near the deceased. Soo Kim Hock was at the scene of work soon after 6.30 a.m. He spoke to the deceased who is alleged to have said that he was feeling a bit giddy. When asked why he had come to work when he was feeling giddy, the deceased replied that since he had already come to work it was a small matter.

Tan Sooi Nyeo's evidence was that when she got to the field at 6.30 a.m. on that day she saw the deceased working inside the drain, using a parang as well as a changkol. She also said that she had seen her *kepala* talking to the deceased as the deceased was working in the drain, after which the *kepala* went away and the deceased continued working until she heard him utter a sound 'Oh'. The other female Chinese weeders gave almost similar evidence, although Chu Mi Moy said that she did not see whether or not the deceased was there when she started work at about 6.30 a.m., her evidence being that she first saw him at about 7 a.m. when she saw him collapse and heard him groaning. Upon hearing the deceased groan, the three female Chinese weeders shouted for the *kepala* who was not very far away. The *kepala* came, went down to the drain and lifted up the deceased. He called the deceased by name but there was no answer. He then called the mandore (*kangany*) who came with some of his labourers and the deceased was taken out and put on the top of the drain. Soon afterwards he was removed to the District Hospital, Klang.

At the hospital Dr. D. K. Mitra carried out a post-mortem examination on the body of the deceased at about 11.50 a.m. According to his post-mortem report, there were no external marks of violence on the head, body or the limbs but the neck veins were engorged. There was no inter-cranial injury or haemorrhage. His report on the condition of the heart was: stopped in diastole with dark blood in all chambers, two infarction scars seen, right ventricle. There was nothing abnormal about any of the other organs. The conclusion at which Dr. Mitra arrived was that there was no obvious cause of death, but under cause of death he stated with a question mark, "sewer gas poisoning (awaiting confirmation from chemist)". The report mentioned that specimens of lungs and blood were sent for analysis, but before any report on the analysis was received Dr. Mitra left for England.

The post-mortem report of Dr. Mitra was referred to Mr. Ng Cheuk Hing, a specialist surgeon in charge of the District Hospital, Klang. On studying this report Mr. Ng said that it was obvious that there was previous disease in the deceased's heart because of the two old infarction scars seen in the right ventricle. On the strength of that he said that it was quite possible that any exertion such as the strain of clearing the three-foot deep drain of weeds would have precipitated death. This was the opinion to which he stood firm during the course of his evidence at an inquiry under section 27 of the Ordinance before an appropriate functionary of the Department of Labour and Industrial Relations, Port Swettenham on 3rd April, 1962. What he said in effect was that from the post-mortem findings he felt that the most likely cause of death was heart failure. In his opinion the possibility of death by reason of the infarction did not occur to Dr. Mitra at the time of the post-mortem examination. He summed up his evidence by saying that in view of the two infarction scars he assumed that the deceased had coronary atheroma and that he was liable therefore to have another coronary thrombosis from any work that he did as a field worker or even by splitting firewood with an axe. He went on to say that from the chemist's report he formed the opinion that it

was unlikely that the deceased had died of sewer gas poisoning. In cross-examination he said that the work which the deceased was engaged in doing would be a strain upon his already weakened heart, and that, in view of the history of the deceased's heart, the work he was engaged in doing was more likely to have caused his death than if he had stopped working or engaged in lighter work.

In his evidence before the arbitrator Mr. Ng stated:

"It is possible to have atheroma in smaller branches without obvious disease in the main branches. You cannot examine the smaller branches which are microscopic. I can say no more than that there were two old infarction scars as stated in the post-mortem report and these scars could have been caused either by coronary thrombosis or spasms in the blood vessels. If a man has an acute attack of coronary thrombosis of which he dies within a very short time, the blood clot would still be in the blood vessels. Where a person dies between 6.30 a.m. and 7 a.m. and post-mortem is done at 11.50 a.m. generally the blood clot should be still in the blood vessel. It is correct to say that where a person has had coronary thrombosis, the extent to which physical exertion is permissible depends on the extent to which the heart muscle is permanently damaged by the attack of coronary thrombosis. If ever there is infarction physical exertion must be restricted whatever the extent of the damage to the heart. In my view it is possible that the work that deceased in this case performed as a field worker since he acquired the infarction scars would probably have resulted in a steady deterioration of his heart ultimately leading to his death. There is nothing in the post-mortem report that there had been a recent attack of coronary thrombosis."

Dr. T. Balasingham, a pathologist at the General Hospital, Kuala Lumpur with 30 years experience, also gave evidence before the arbitrator. Briefly, his evidence was that as there was no mention in the post-mortem report of any evidence of atheroma or blood clot he could not say whether the cause of death in this case was coronary thrombosis or not. In his opinion the two old infarction scars seen in the right ventricle were due to inadequate blood supply and the inadequate blood supply was due to the narrowing of the lumen of the small vessels; if they were due to coronary thrombosis he would expect more detailed description of the scars including the extent of the scars. He agreed, however, that if there are signs of old attacks of coronary thrombosis, large or small, the patient is predisposed to further attacks, and that this may be a case of coronary thrombosis.

On the evidence before him the arbitrator found that the deceased was at the relevant time and place working with other labourers clearing a drain in the estate with a changkol and that after about half an hour in the course of the work he suddenly collapsed and died. He accepted the evidence of Mr. Ng Cheuk Hing as to the cause of death by heart failure and believed that the exertion of the work had contributed to the death of the deceased. He therefore held that the death was an accident arising out of and in the course of the deceased's employment, and accordingly made an award of compensation in the sum of $2,880.

The parties were agreed that the deceased was a workman within the meaning of the Ordinance, that his death occurred in the course of his employment, that his average monthly earnings were $80 and that his five minor children are total dependents. The questions for the arbitrator to decide were (1) whether there was personal injury by accident, (2) if so, whether it arose out of the employment and (3) whether death was due to personal injury by accident. It is common ground that the answers to those questions, and consequently the decision on this appeal, turn on the construction and interpretation of section 4(1)(a) of the Ordinance, the terms of which are in *pari materia* with section 1(1) of the English Workmen's Compensation Acts, 1897, 1906 and 1925.

The word "accident" is not defined either in the English Acts or in our Ordinance, but its meaning was explained by the House of Lords in the leading case of *Fenton* v. *Thorley & Co., Ltd.*[1] That was a case in which a workman, employed to turn the wheel of a machine, by an act of over exhaustion ruptured himself. It was held that he suffered an "injury by accident" within the meaning of the Act and was entitled to compensation. Lord Macnaghten in explaining the meaning of the phrase "injury by accident" said at pages 446 and 448:

"If a man, in lifting a weight or trying to move something not easily moved, were to strain a muscle, or rick his back, or rupture himself, the mishap in ordinary parlance would be described as an accident. Anybody would say that the man had met with an accident in lifting a weight, or trying to move something too heavy for him."

"Now the expression 'injury by accident' seems to me to be a compound expression. The words 'by accident' are, I think, introduced parenthetically as it were to qualify the word 'injury', confining it to a certain class of injuries, and excluding other classes, as, for instance, injuries by disease or injuries self-inflicted by design. Then comes the question, Do the words 'arising out of and in the course of employment' qualify the word 'accident', or the word 'injury', or the compound expression 'injury by accident'? I rather think the latter view is the correct one . . I come, therefore, to the conclusion that the expression 'accident' is used in the popular and ordinary sense of the word as denoting an unlooked-for mishap or an untoward event which is not expected or designed."

His Lordship then quoted with approval the following words (at page 449) of Lord M'Laren in the then recent decision of the Court of Sessions in Scotland in the case of *Stewart* v. *Wilsons and Clyde Coal Co. Ltd.*[2]:

"If a workman in the reasonable performance of his duties sustains a physiological injury as the result of the

work he is engaged in . . . this is accidental injury within the sense of the statute."

Lord Shand stated his opinion on the matter (at page 451) as follows:

"I shall only add that, concurring as I fully do in holding that the word 'accident' in the statute is to be taken in its popular and ordinary sense, I think it denotes or includes any unexpected personal injury resulting to the workman in the course of his employment from any unlooked-for mishap or occurrence."

Finally, Lord Lindley said (at page 453):

"The word 'accident' is not a technical legal term with a clearly defined meaning. Speaking generally, but with reference to legal liabilities, an accident means any unintended and unexpected occurrence which produces hurt or loss. But it is often used to denote any unintended and unexpected loss or hurt apart from its cause; and if the cause is not known the loss or hurt itself would certainly be called an accident. The word 'accident' is also often used to denote both the cause and the effect, no attempt being made to discriminate between them. The great majority of what are called accidents are occasioned by carelessness; but for legal purposes it is often important to distinguish carelessness from other unintended and unexpected events."

The meaning of the words "injury by accident" was further explained by the case of *Clover, Clayton & Co. Ltd.* v. *Hughes*,[8] in which a workman, suffering from serious aneurism, was employed in tightening a nut by a spanner when he suddenly fell down dead from rupture of the aneurism. The county court judge found upon conflicting evidence that death was caused by a strain arising out of the ordinary work of the deceased operating upon a condition of the body which was such as to render the strain fatal. The county court judge also found that the aneurism was in such an advanced condition that it might have burst while the man was asleep, and very slight exertion, or strain, would have been sufficient to bring about a rupture. The Court of Appeal affirmed his decision, and the House of Lords, affirming the decision of the Court of Appeal, held that there was evidence to support the finding and that it was a case of "personal injury by accident arising out of and in the course of the employment" within the meaning of the Workmen's Compensation Act, 1906. Lord Loreburn L.C. said that for an accident to be one "arising out of the employment" there must be some relation of cause and effect between the employment and the accident as well as between the accident and the injury. His Lordship said (at pages 245, 246 and 247):

"It seems to me enough if it appears that the employment is one of the contributing causes without which the accident which actually happened would not have happened, and if the accident is one of the contributing causes without which the injury which actually followed would not have followed.

The first question here is whether or not the learned judge was entitled to regard the rupture as an 'accident' within the meaning of this Act. In my opinion he was so entitled. Certainly it was an 'untoward event.' It was not designed. It was unexpected in what seems to me the relevant sense, namely, that a sensible man who knew the nature of the work would not have expected it. I cannot agree with the argument presented to your Lordships that you are to ask whether a doctor acquainted with the man's condition would have expected it. Were that the right view, then it would not be an accident if a man very liable to fainting fits fell in a faint from a ladder and hurt himself. No doubt the ordinary accident is associated with something external; the bursting of a boiler, or an explosion in a mine, for example. But it may be merely from the man's own miscalculation, such as tripping and falling. Or it may be due both to internal and external conditions, as if a seaman were to faint in the rigging and tumble into the sea. I think it may also be something going wrong within the human frame itself, such as the straining of a muscle or the breaking of a blood vessel. If that occurred when he was lifting a weight it would be properly described as an accident. So, I think, rupturing an aneurism when tightening a nut with a spanner may be regarded as an accident. It cannot be disputed that the fatal injury was in this case due to this accident, the rupture of the aneurism under the strain.

An accident arises out of the employment when the required exertion producing the accident is too great for the man undertaking the work, whatever the degree of exertion or the condition of health.

It may be said, and was said, that if the Act admits of a claim in the present case, every one whose disease kills him while he is at work will be entitled to compensation. I do not think so, and for this reason. It may be that the work has not, as a matter of substance, contributed to the accident, though in fact the accident happened while he was working. In each case the arbitrator ought to consider whether in substance, as far as he can judge on such a matter, the accident came from the disease alone, so that whatever the man had been doing it would probably have come all the same, or whether the employment contributed to it. In other words, did he die from the disease alone or from the disease and employment taken together, looking at it broadly? Looking at it broadly, I say, and free from over-nice conjectures, was it the disease that did it, or did the work he was doing help in any material degree?"

Lord Macnaghten, referring to the case of *Fenton* v. *Thorley & Co., Ltd.*[1] said (at pages 247 and 248):

"There the Court of Appeal had held that if a man meets with a mishap in doing the very thing he means to do the occurrence cannot be called an accident. There must be, it was said, an accident and an injury: you are not to confuse the injury with the accident. Your Lordships' judgment, however, swept away these niceties of subtle disquisition and the endless perplexities of causation. It was held that 'injury by accident' meant nothing more than 'accidental injury' or 'accident,' as the word is popularly used."

Further down his judgment (at pages 249 and 250) his Lordship said:—

"The fact that the man's condition predisposed him to such an accident seems to me to be immaterial. The work was ordinary work, but it was too heavy for him. It must be taken on the finding of the learned county court judge that the accident was unexpected by the workman. It can hardly be supposed that he intended to kill himself. The fact that the result would have been expected, or indeed contemplated as a certainty, by a medical man of ordinary skill if he had diagnosed the case is, I think, nothing to the purpose. An occurrence I think is unexpected if it is not expected by the man who suffers by it, even though every man of common

sense who knew the circumstances would think it certain to happen."

As will be observed from the decision in *Fenton's case,*[1] injury by disease alone, not accompanied by an accident, is expressly excluded. However, the fact that the accident causes injury in the shape of a disease does not render the cause not an accident. This was decided in *Brintons Ltd.* v. *Turvey,*[4] in which, while a workman was sorting wool in a factory, a bacillus (according to medical evidence or theory) passed from the wool to the eye of the workman and infected him with anthrax of which he died. The House of Lords, affirming the decision of the Court of Appeal, held that this was a case of "injury by accident" within the meaning of the Workmen's Compensation Act, 1897. This appeal arose from an award made by a county court judge on grounds which were stated by him as follows:—

"I find as a fact that the anthrax, which was the immediate cause of death, was caused by the accidental alighting of a bacillus from the infected wool on a part of the deceased's person which afforded a harbour in which it could multiply and grow and so cause a malignant disease and consequent death. I can see no distinction in principle between the accidental entry of a spark from an anvil or the accidental squirting of scalding water or some poisonous liquid into the eye. The only difference is that in those cases the foreign substance would be so large as to be visible, in this case the foreign substance is microscopic. I think it immaterial whether there was in fact any external pimple or abrasion, because if there was, it was a fortuitous accident that the bacillus alighted on that particular spot. But I find in fact that there was no such abrasion or pimple. My judgment is based on the fact that there was in this case a fortuitous intrusion of a foreign substance into the eye which by its presence there caused death."

Needless to say, the House followed its own decision in *Fenton* v. *Thorley & Co. Ltd.*[1] The Earl of Halsbury L.C. agreed that the act was intended to exclude idiopathetic disease, but his Lordship went on to say (at page 233):—

"....but when some affection of our physical frame is in any way induced by an accident, we must be on our guard that we are not misled by medical phrases to alter the proper application of the phrase 'accident causing injury,' because the injury inflicted by accident sets up a condition of things which medical men describe as disease.....It does not appear to me that by calling the consequences of an accidental injury a disease one alters the nature or the consequential results of the injury that has been inflicted."

Lord Macnaghten stated as follows (at page 234):—

"The accidental character of the injury is not, I think, removed or displaced by the fact that, like many other accidental injuries, it set up a well-known disease, which was immediately the cause of death, and would no doubt be certified as such in the usual death certificate."

In *Ismay, Imrie & Co.* v. *Williamson* [5] a workman, in a weak and emaciated condition, while raking out ashes from under the boiler in the stokehold of a steamship received a heat stroke, from the effect of which he died. The House of Lords held that this was a case of death by accident within the meaning of the Workmen's Compensation Act, 1906. The deceased was a brass finisher by trade in England. He went to the United States in the hope of bettering himself. He failed utterly. Destitute and half starved, he applied to the Seamen's Mission in New York, and by their help obtained a passage home, shipping as a trimmer on board the steamship *Majestic.* He seemed to have been a miserable creature physically — undersized, underfed and so emaciated that, as one of the witnesses said, "his bones projected". Lord Loreburn L.C. said (at page 439):—

"To my mind the weakness of the deceased which predisposed him to this form of attack is immaterial. The fact that a man who has died from a heat stroke was by physical debility more likely than others so to suffer can have nothing to do with the question whether what befell him is to be regarded as an accident or not.

In my view this man died from an accident. What killed him was a heat-stroke coming suddenly and unexpectedly upon him while at work. Such a stroke is an unusual effect of a known cause, often, no doubt, threatened, but generally averted by precautions which experience, in this instance, had not taught. It was an unlooked for mishap in the course of his employment. In common language, it was a case of accidental death."

Lord Ashbourne said (at page 440):—

"Was this an accident arising out of and in the course of his employment? With great deference to those who hold a contrary opinion, I can myself see no room for serious doubt on the subject. Everything was in the course of his employment and arising out of it. But for the boiler and the heat-stroke and the speedy exhaustion it caused, there would have been no accident."

His Lordship then referred to *Fenton* v. *Thorley & Co., Ltd.*[1] and the passage referred to with approval by Lord Macnaghten and Lord Lindley in that case from the judgment of Lord M'Laren in the Scottish case of *Stewart* v. *Wilsons and Clyde Coal Co.*,[2] which passage, he said, was a valuable authority. His Lordship also referred to the case of *Brintons, Ltd.* v. *Turvey,*[4] the anthrax case in which Lord Macnaghten reaffirmed his definition of accident in *Fenton's case.* His Lordship continued (at page 441):—

"In my opinion every word of that definition applies to the facts of this case, which are in many ways more simple and direct than those in the case of *Brintons* v. *Turvey.*

Although a heat-stroke may be called a disease, it is in this case, in my opinion, a disease directly caused by an accident arising out of or in the course of an employment, particularly dangerous to Williamson, in consequence of his weak state of health. Its not being scheduled as an industrial disease in the Act of 1906 does not affect, the question, for the Act expressly provides that 'nothing shall affect the rights of a workman to recover compensation in respect of a disease to which the section does not apply, if the disease is a personal injury by accident within the meaning of the Act.' I do not at all say that all diseases arising out of or in the course of employment should be regarded as a personal injury by accident, but I am of opinion that under the

circumstances of this case and its facts Williamson was killed by a personal injury by accident, and that the appellants are accordingly liable."

Compensation is also payable where injury in the shape of disease may be the consequence of any or all of a series of specific and ascertainable accidents. This was laid down in *Innes (or Grant)* v. *G. & G. Kynoch,*[6] in which a workman employed in handling artificial manure, consisting mainly of bone dust, died from blood poisoning caused by his becoming infected through an abrasion on his leg by certain noxious bacilli, which were present in large numbers in bone dust, but were also found in the air and in other substances, though in a much lesser degree. It did not appear when or how he received the abrasion, and it was impossible to say with certainty when the infection occurred. The arbitrator found, as the result of the medical evidence, that the infection which caused the illness was derived from the poisonous germs contained in the bone dust which the deceased handled in the course of his employment, and awarded compensation under the Workmen's Compensation Act, 1906. The House of Lords held that the fortuitous alighting of the bacilli upon the abraded spot constituted an accident within the Act and that the provisions of the Act as to fixing the date of the accident are satisfied if, having regard to the nature of the particular injury alleged, the date of the occurrence of the accident is reasonably fixed so as to connect the injury with the accident. Similarly, in *Charles Burrell & Sons, Lim* v. *Selvage,*[7] where a girl had received a series of scratches and cuts on her hands during her work extending over a period of some months, the combined effect of which was to produce a septic condition incapacitating her from work, it was held that this was an injury "by accident" for which she was entitled to compensation under the Workmen's Compensation Act, 1906, although the times and places of the several scratches or cuts could not be fixed and her condition could not be attributed to any one particular injury. The principle laid down in these two cases was followed in *Pyrah* v. *Doncaster Corpn.*[8] in which the applicant, who was employed as a nurse in the employer's isolation hospital for tuberculosis patients, contracted tuberculosis during the period of her employment. It was held by the Court of Appeal that, although it might not be possible to fix the exact dates on which the applicant inhaled tuberculosis germs, on each occasion on which that occurred there was an assault of bacilli which constituted an "accident", and, therefore, she was entitled to compensation.

In direct contrast with the principle laid down in the three cases which I have mentioned in the previous paragraph is the principle laid down in *Roberts* v. *Dorothea Slate Quarries Co. Ltd.,*[9] in which a workman was employed in slate quarries as a slate splitter from 1921 to 1941. He worked in closed sheds in which the air was impregnated with dust on account of the work done there. The slate contained particles of silica which were inhaled by the workman and produced silicosis as a result of which his health broke down and he was completely incapacitated. It was held by the House of Lords that the incapacity caused by silicosis was the result of a continuous process going on substantially from day to day over a period of years and could not be said to be the result of an accident or a series of accidents, each one of which was specific and ascertainable, and, accordingly on a true construction of the Act, 1925, silicosis was not an "injury by accident" within the meaning of section 1(1). Lord Porter said:

> "In truth, two types of cases have not always been sufficiently differentiated. In the one type, there is found a single accident followed by a resultant injury, as in *Brintons, Ltd.* v. *Turvey,*[4] or a series of specific and ascertainable accidents followed by an injury which may be the consequence of any or all of them, as in *Burrell (Charles) & Sons, Ltd.* v. *Selvage.*[7] In either case it is immaterial that the time at which the accident occurred cannot be located. In the other type, there is a continuous process going on substantially from day to day, though not necessarily from minute to minute or even from hour to hour, which gradually and over a period of years produces incapacity. In the first of these types, the resulting incapacity is held to be injury by accident. In the second it is not. In the case of silicosis it is, of course, possible to divide up the cause of the final collapse and say that each particle of silica striking upon and adhering to the lung is a separate accident, but, however analytically maintainable, the attribution of the resultant silicosis to an accidental cause is an unreal one. The distinction between accident and disease has been insisted on throughout the authorities and is, I think, well founded. Counsel for the employers formulated the proposition on which he relied by suggesting that, where a physiological condition is produced progressively by a cumulative process consisting of a series of occurrences operating over a period of time, and the microscopical character of the occurrences and the period of time involved are such that in ordinary language that process would be called a continuous process, the condition is not produced by an accident or accidents within the Acts. I do not know, however, that any explicit formula can be adopted with safety. There must, nevertheless, come a time when the indefinite number of so-called accidents and the length of time over which they occur take away the element of accident and substitute that of process. In my opinion, disability from silicosis is one of such instances. It cannot be said to be the result of injury by accident."

It will be logical and in proper sequence at this stage to mention the principle in *Steel* v. *Cammell Laird & Co. Ltd.*[10] that there can be no injury by accident within the meaning of the Act, unless the applicant can indicate by means of some definite event the time, day, circumstance and place in which the accident occurred which occasioned the disease. In that case a workman, whose employment necessitated the handling of white and red lead, gradually accumulated lead

in his system with the ultimate result that he suffered from lead poisoning, which produced partial paralysis and incapacity for work. The Court of Appeal held that the workman was not entitled to an award under the Act because it was not possible to indicate the time at which there was an accident which caused injury to the worker. The same principle was followed in *Broderick* v. *The London County Council,*[11] in which a workman contracted enteritis from inhaling sewer gas in the course of his employment, in *Eke* v. *Hart-Dyke* [12] which was a case of death by ptomaine poisoning from sewer gas being inhaled or absorbed into the workman's system, and in *Evans* v. *Dodd* [13] where a workman employed to dip rings into a basin of carbon bisulphide with his fingers was affected by eczema caused gradually by the exposure to fumes or splashes from the chemical. In the more recent case of *Ormond* v. *C. D. Holmes & Co. Ltd.*[14] a blacksmith's striker who had followed this at times strenuous occupation for years had a stroke at home. A few days later he returned to work against his doctor's advice and some two months later gradually became ill at work and collapsed. The county court judge found on the medical evidence that the work which the man was actually engaged on neither caused, nor contributed to, nor accelerated the second stroke and that he could not associate the second stroke with the work which the man was engaged upon nor with any particular work done before then. The Court of Appeal held that the workman's incapacity was due to disease no doubt aggravated by his work, but as it was impossible to point to any specific event that was responsible for his change in condition, there was no accident within the Workmen's Compensation Act, 1925, section 1(1).

Closely allied to the principle in *Steel's case* is the principle that no compensation is payable where the injury is the inevitable result of work long continued. This principle is to be gathered from the two cases of *Marshall* v. *East Holywell Coal Co.* and *Gorley* v. *Backworth Collieries* [15] which were heard together by the Court of Appeal on the day after *Steel's case.* The miner in the first case was incapacitated for work by "beat hand" (an injury caused by an abscess gradually produced by the jar, friction, or pressure to the hand caused by using the pick), and in the second case by "beat knee" (an injury gradually developed by long continued pressure on the knee by kneeling while at work). This principle is further illustrated by the case of *Coe* v. *Fife Coal Co. Ltd.*[16] where a man suffered cardiac breakdown due to the fact that the work on which he was engaged for some days was too heavy for him, a case in which Lord Kinnear observed (at page 13) that "the word 'accident' seems to me to exclude the anticipated and necessary consequence of continuous labour." Again, in *Walker* v. *Hockney Brothers,*[17] a workman gradually acquired paralysis of his right leg through the strain of riding a heavy carrier tricycle for his employers. At the end of five years, the condition incapacitated him from work. It was held that his incapacity was not due to personal injury by accident. It was due, said Moulton L.J. (at page 21) to a breakdown from overwork. "Waste over-running repair is not an accident." Similarly, in *Black* v. *New Zealand Shipping Co. Ltd.*[18] and *Pyper* v. *The Manchester Liners, Ltd.,*[19] where death was held to be due to the continuous and excessive strain of work, it was held that there was no compensation payable.

Where the evidence is equally balanced either for or against an accident no compensation is payable on the ground of failure on the part of the applicant to discharge the onus which lies upon him. The case in point is the case of *Barnabas* v. *Bersham Colliery Co.*[20] in which a collier died of apoplexy during working hours at the mine. The majority of the doctors said that his arteries were in a very diseased condition and that apoplexy might have come upon him when asleep in bed, or when walking about, or when over exerting himself. The collier's work on that day was to build a "pack"; but there was no evidence that apoplexy came upon him when he was incurring a strain. The county court judge came to the conclusion that the workman died not as the result of a blow or fall but from apoplexy brought on by the strain while engaged in the heavy work of building the "pack", and he made an award in favour of the dependents. On appeal to the Court of Appeal it was held that as the evidence as to the cause of death was equally consistent with an accident and with no accident, the applicants had not discharged the onus of proof that was upon them. The House of Lords affirmed the decision of the Court of Appeal. In the Court of Appeal Cozens-Hardy M.R. speaking of the case of *Clover, Clayton & Co. Ltd.* v. *Hughes* [3] which by then had been heard in the Court of Appeal but had not yet come before the House of Lords, made this essential distinction:—

> "In that case there was proof of what the workman was doing at the moment of the accident; he was tightening a nut with a spanner — an action which obviously involved some exertion — when a blood vessel broke. There was a strain occurring in the ordinary discharge of the workman's duties producing this rupture. But here in this case we are entirely in the dark. There was no particle of evidence that this collier incurred any strain, even in the proper and limited sense of that word, at the time when he was seized with apoplexy. There was nothing to show that the accident arose out of — though doubtless it arose in the course of — his employment."

In the House of Lords Lord Loreburn L.C. made no reference to the case of *Clover, Clayton & Co.*

Ltd. v. *Hughes*,[3] which had been finally decided in the House of Lords some 8 months earlier, but said:

"The learned county court judge says that the deceased died 'from apoplexy, brought on by strain, while engaged in the heavy work of building the 'pack'.' Was there any evidence to support the finding that the apoplexy was brought on by the strain? The only piece of evidence that has been referred to is this, that the doctor says that 'the man's arteries, especially the arteries of the brain, had degenerated, and great effort in doing anything might cause them to rupture; on the other hand, they might have ruptured while he was asleep in bed. The arteries were in such a state, they might rupture with slight exertion, or with no exertion at all."

In *Hawkins* v. *Powell's Tillery Steam Coal Co. Ltd.*[21] a workman collapsed at his work and died the same day from angina pectoris. The evidence was that his heart was in a bad state, and that the attack might have been caused by exertion, or might have been due to natural causes. The Court of Appeal held, reversing the decision of the county court judge, that the dependents had not discharged the onus of proving that the accident arose "out of the employment". In *Farmer* v. *Stafford, Allen & Sons, Ltd.*[22] a man at work called out that he had hurt his back. No one saw what had happened. He was taken home complaining of pains in the back and stomach. He died a week after, of intestinal obstruction. There was evidence of previous illnesses and pains in the stomach. The Court of Appeal held that the onus of proving an accident had not been discharged. In *Beaumont* v. *Underground Electric Railways Company of London Ltd.*[23] a workman, suffering from heart disease, had to leave work owing to failure of the heart. He brought proceedings, alleging that he had strained his heart turning a heavy valve. The judge disbelieved his evidence and in the absence of any other evidence of an accident nevertheless found that the man had strained his heart at work and that he was injured by accident arising out of the employment. The Court of Appeal held that there was no evidence to support the finding.

In the case of *Maxwell* v. *Ruabon Coal and Coke Co. Ltd.*[24] a collier was engaged in taking two empty trucks running on tramway lines down an incline of 1 in 20. He was walking in front of the trucks holding them back by his body acting as a sort of break. The trucks had only gone down some ten yards or so. He was afterwards found dead with his legs close to or under the wheels of the leading truck, which were pressing considerably upon one leg. A claim was made by his dependents for compensation. At the hearing, the medical evidence was that he was suffering from advanced aneurism of the aorta from which he might have died at any moment. The county court judge found that death might have been equally occasioned by something the man was doing at work, or simply by failure of the heart, as the consequence of disease. He held that the applicants had failed to prove that the man's death was occasioned by accident, and made an award for the employers. The Court of Appeal held that there was no misdirection.

The case of *Barnabas* v. *Bersham Colliery Co.*[20] was applied in the case of *Muscroft* v. *Stewarts and Lloyds Ltd.*,[25] in which a miner who was known to be suffering from valvular disease of the heart, returned to work against his doctor's advice. His condition was such that he was liable to collapse or sudden death at any moment. He went down the mine at 10.30 p.m. and was alive and apparently well at 3 a.m. At 4 a.m. he was found dead in his stall lying back as though asleep. There was no evidence of any fall of roof and he had no pick in his hand. He was alone at the time of his death and there was no evidence of what the man was actually doing. The county court judge inferred that death had been caused by a strain at work and made an award in favour of the defendants. The Court of Appeal held that as there was no evidence that the man's death was caused by any strain at work there was no evidence that death resulted from any injury by accident arising out of the employment. Lord Hanworth M.R. referring to the *Barnabas case*, said (at page 281):—

"That is a case where it was held to be insufficient evidence, and it would appear that, strong as the inference may be — or, perhaps, the better way of putting it is this — easy as it is to reconstruct the picture, yet one must not reconstruct the picture in a certain way unless the evidence fully justifies that picture."

His Lordship also cited *Hawkins* v. *Powell's Tillery Steam Coal Co.*[21] and *Maxwell* v. *Ruabon Coal and Coke Co.*[24] and said (at page 282):—

"Those cases are illustrations of the fact that where you have a man known to have a diseased heart, whose death occasions no surprise when it occurs at any moment of the night or day, it is not possible to draw the inference that the death must have supervened upon some work done by him, and thus discharge the onus that lies upon the claimant."

In the case of *Hayman* v. *Pensford and Bromley Collieries (1921), Ltd.*[26] a colliery repairer, fifty-eight years of age and apparently in excellent health, was scooping out a hole in the earth with an iron bar. After kneeling at this work for a minute or two he fell forward without a word and died some hours later without regaining consciousness. There was no post-mortem or inquest as the medical man called to the deceased was alleged to have said at the time that death was due to "natural causes". At the arbitration brought by the widow the same medical man in his evidence said that he did not understand the meaning of the phrase "natural causes"

in its legal significance, and that he now thought that the work was connected with the death. The county court judge, sitting with a medical assessor, said that on the evidence he was entitled in law to find either way, but having discussed the medical aspect with the medical assessor he did not feel that the applicant had discharged the onus of showing that the death had any connection with the work on which the deceased was engaged at the time of his collapse, and made his award in favour of the employer. The Court of Appeal held that there was evidence to support the finding and that there was no misdirection.

Where the evidence is more consistent with an accident the workman or his dependents are entitled to compensation. This was laid down by the House of Lords in *Lancaster* v. *Blackwell Colliery Co. Ltd.*[27] In that case a collier left home for work at 5.15 a.m., apparently in his usual health. During his work, which was that of a banksman lifting tubs, he complained of pain in the stomach, which he attributed to indigestion, and about 9 a.m. went home suffering from very severe pain. He then saw his doctor. Later, vomiting commenced, and continued at intervals for four or five days. A week after leaving work he was taken to the hospital, and operated on for strangulated hernia, from the effects of which he died shortly afterwards. On the hearing of a claim for compensation the medical evidence showed that the hernia might have been caused by a variety of strains, such as sneezing, coughing, vomiting, or strain at work. The doctors, however, agreed that, if the pain was contemporaneous with straining at work, they would have attributed it to such strain. The county court judge found that the hernia was caused by strain at work, and consequently held that death resulted from accident arising out of and in the course of the deceased's employment. The Court of Appeal set the award aside on the ground that the facts which were proved gave rise to conflicting inferences of equal degree of probability, so that the choice between them was a matter of conjecture, and therefore the onus of proving that the injury by accident to the deceased man arose out of and in the course of his employment, which was upon the applicant, had not been discharged by her. On further appeal by the applicant the House of Lords held, reversing the decision of the Court of Appeal, that the evidence was not equally consistent with death from natural causes as from accident; there was sufficient evidence for comparing and balancing the probabilities, and the learned county court judge was justified, on the evidence, in coming to the conclusion that death resulted from injury by accident at work. Lord Birkenhead L.C. said (at page 406) :—

"The principles which have to be applied to facts like these are now well settled; they have been declared on numerous occasions by your Lordships, and they may be very easily summarized. If the facts which are proved give rise to conflicting inferences of equal degrees of probability so that the choice between them is a mere matter of conjecture, then, of course, the applicant fails to prove his case, because it is plain that the onus in these matters is upon the applicant. But where the known facts are not equally consistent, where there is ground for comparing and balancing probabilities as to their respective value, and where a reasonable man might hold that the more probable conclusion is that for which the applicant contends, then the arbitrator is justified in drawing an inference in his favour. That view of the law has been stated in this House repeatedly, and it is not open to challenge to-day."

I pause here to mention that in the present case the learned President as arbitrator based his award on the authority of *Clover, Clayton & Co. Ltd.* v. *Hughes* [3] because he said that, looking at it broadly, the issue fell within the purview of that case. In my opinion it is possible to dispose of this appeal by considering the authorities which I have examined thus far, but I propose to deal with a few more cases which serve as useful illustrations of the tests laid down in the *Clover, Clayton case*

In *Doughton* v. *A. Hickman, Ltd.*[28] a workman, whose duty it was to load heavy sacks on to a truck and then with the help of another to push the truck along rails, was suffering from a weak heart. Shortly after he had been pushing an empty truck, and while he was having a rest he fell senseless and died soon afterwards. The medical evidence proved that the heart would not have failed had it not been subjected to some more than ordinary strain. The county court judge inferred that a strain at work, constituting an accident, had caused the death. The Court of Appeal held that there was evidence to support the inference.

In *M'Ardle* v. *Swansea Harbour Trust* [29] a workman suffered from aneurism of the aorta of the heart, and he was in such a condition that there might have been a rupture at any moment from severe exertion or light exertion or no exertion at all. While moving a box in his employers' service, the lightest part of his work, he fell down dead from the rupture of the aneurism. It was held that he died from an accident arising out of his employment, and that his dependent was entitled to compensation.

In *McFarlane* v. *Hutton Bros. (Stevedores), Ltd.*[30] the deceased McFarlane was employed as a stevedore. He was working in the after-hold of a ship, where iron ore was being unloaded by being lifted out of the hold in a big tub which was lowered into the hold. The tub was carried on a chain and had to be deflected from the perpendicular in order to avoid the top of the tunnel which covered the shaft of the propellers, and to be lowered right down to the iron ore in the hold.

The height of the tunnel was about 10 feet, and there was, therefore, a certain point in the transit of the tub from the deck of the ship down to the bottom of the hold during which the men who were handling the tub had to exercise a certain amount of energy in deflecting the tub so that it cleared the tunnel. The deceased was working with some colleagues in doing this. As well as deflecting the tub when it was resting in proximity to the iron ore it was their business with shovels to put the iron ore into the tub. They began work at an early hour in the morning and they were working in the ordinary course. The deceased never ailed, his wife said, and he worked sometimes three shifts and sometimes five, and he never complained of his work, but subsequent events showed that he was at the time suffering from disease of the coronary arteries of the heart, which sooner or later would cause death. While engaged in pushing or pulling the tub into the right position, the deceased suddenly felt ill, which the learned county court judge thought was attributable to the fact that he had a heart attack. He ceased work for a moment and either stood or sat at the side, but presently, recovering himself somewhat, he endeavoured to put three or four shovelfuls of the iron ore into the tub. Again he felt ill and stopped. He went up a ladder to the top of the tunnel, and there he sat obviously in distress, if not in pain. Eventually he was laid in a recumbent posture with some clothing under his head, but he seemed to be dead at the time that that was done, or he was in the act of dying. By the time the doctor arrived it was found that he was dead. At the most the space of time that passed between his first attack and his being found dead was not more than half an hour. Proceedings were brought by his widow as a dependent claiming compensation on the ground that he died from an accident arising out of and in the course of his employment. The learned county court judge, applying the principle which he found in *Clover, Clayton & Co. Ltd.* v. *Hughes* [3] and relying on the medical evidence, came to the conclusion that the workman died from the disease alone, while at work, there being no accident such as a sudden strain. On appeal by the widow, the Court of Appeal held that the death could be due to an "accident" within the meaning of the Workmen's Compensation Act, 1925, section 1, even though it was not attributable to any sudden, unusual strain having been put on the workman, and, therefore, his widow was entitled to an award of compensation under the Act. Lord Hanworth M.R. said (at pages 247 and 249) :—

"It appears to me that he has been looking for some evidence which *vis-a-vis* a sudden strain would justify his finding that there was an accident, and that in the absence of a sudden strain, which connotes an accident, there was no accident within the meaning of the Workmen's Compensation Act in respect of which the widow could have recovered. It appears to me that in so applying the law the learned judge misdirected himself.

Supplementing the speech of Lord Macnaghten in *Fenton* v. *Thorley & Co., Ltd.*[1] by the illustrations given in *Clover, Clayton & Co., Ltd.* v. *Hughes* [3] and *M'Ardle* v. *Skansea Harbour Trust,*[29] it appears to me quite plain that a man may suffer an accident and be entitled to recover in respect of the injury caused by the accident within the meaning of the Workmen's Compensation Act, although the strain which sets up and puts in motion the cause of his death may arise in the ordinary exercise of his work which he is employed to do and is not of a special or momentary character. For these reasons, therefore, it appears to me that the learned judge has misdirected himself and applied a wrong basis on which he has reached his conclusion."

Atkin L.J in his judgment. having dealt with the facts of the case at considerable length with particular reference to *Fenton's case* and the *Clover, Clayton case,* said (at page 251) :—

"It appears to me that if it is established that a man suffers a strain of the heart which causes death as a result of the work engaged in, nobody can say that he has not sustained a physiological injury and, therefore, has met with an accidental injury."

His Lordship continued:

"I find myself quite unable to distinguish this case from *M'Ardle* v. *Swansea Harbour Trust.*[29] It appears to me to be exactly the same in every detail. The only difference is that the loss or hurt here took some twenty or thirty minutes to develop, whereas in *M'Ardle case* the loss or hurt happened at once, according to the nature of the accident, because it was the bursting of an aneurism, and therefore death was caused immediately."

In *Falmouth Docks and Engineering Co.* v. *Treloar* [31] a dock labourer, 46 years of age, while helping to load the ship gave himself a jerk when trying to steady a swinging load with his hook, but continued working. A quarter of an hour later there was a pause in the work and the workman sat down on some sacks. In order to bring another sack nearer to the place where he was sitting, he raised his hook to stick it in the sack, but in doing so fell forward and died. The man suffered from heart disease but the nature of the disease was uncertain. His panel doctor, who had died before the proceedings in the county court, had given a certificate assigning the cause of death to myocarditis and syncope. The widow filed a request for arbitration. At the hearing aneurism of the aorta and acute dyspepsia were also put forward as possible causes of death. The county court judge held that there was not sufficient evidence of an accident arising out of or in the course of the man's employment because any slight muscular movement might have caused his death at any time and there was nothing fortuitous about it. On appeal to the Court of Appeal it was held that this was a case of accident within the meaning of the Act. On further appeal the House of Lords held, affirming the decision of the Court

of Appeal, that on the evidence it could not be doubted that the work which the deceased man was doing contributed to his death, that when that was proved it established that the death was due to an accident arising out of and in the course of his employment, unless the contrary was shown, and that, in applying as the test the question whether the death was to be expected at any time the county court judge had misdirected himself. Lord Buckmaster in the course of his speech said (at pages 485 and 486):—

"My Lords, I must say it appears to me that the learned county court judge has misunderstood what he really had to do. He was not bound to find what particular form of heart disease the man died from, nor was it necessary for him to examine in detail the exact periods of time that elapsed between the time when the man had first caught hold of this swinging load and the time he died. Those things were really entirely unnecessary, because the doctor who gave evidence said in plain language that it was inconceivable that the work had no effect on the disease; and there really was no effective evidence the other way.

If a man is engaged in doing work, and as part of that work and in the course of it does something which he might do outside but which, none the less, happens in the course of and arising out of his work, and it causes his death, the accident has arisen out of and in the course of his employment. I put to counsel in the course of this case an illustration which appears to me perfectly sound: Supposing a workman is engaged in putting books on library shelves and he lifts the books, and in the course of lifting the books to put them on the library shelves, the action of lifting the books causes a strain upon his heart which his heart cannot bear, and he falls down dead, none the less the accident arises out of and in the course of his employment."

In *Partridge Jones and John Paton, Ltd.* v. *James* [32] a workman who was suffering from disease of the coronary artery brought on by syphilis and whose condition was such that he might die from heart failure at any moment, whether working or not, was working as a dipper in a galvanizing department. He was engaged in the operation of cleaning out the dross which was of a laborious nature. This operation being finished, he sat down and within ten minutes died. The post-mortem examination resulted in a report that the cause of death was angina pectoris. There was medical evidence to the effect that the operation of drossing had accelerated the workman's death. The House of Lords, affirming the decision of the Court of Appeal, held that an accident arises out of a workman's employment within the meaning of section 1 of the Workmen's Compensation Act, 1929 when the required exertion producing the accident is too great for the man undertaking the work, whatever the degree of exertion or the condition of the workman's health. Lord Buckmaster stated (at page 504) in his judgment:—

"Now the real case as made against the judgment appealed from is this, that, in order to establish that a man is entitled to the benefit of the Act, it is necessary to show that he has suffered an injury as the result of some definite thing that he did in the course of his work. If, in the normal course of his work, owing to the imperfect condition of his arteries or whatever other internal organ may have been diseased, he breaks down and dies, the appellants' case is that, although the work contributed to the death, that is not sufficient unless you can point to a specific injury resulting from a specific act. That would also appear to have been the view of the learned county court judge, if he had not thought that authority was too strong for him.

My Lords, whatever may have been said about the merit of that argument some twenty years ago, it appears to me it is impossible to be effectively advanced to-day, while this House, as well as all the other courts, are bound by what was decided in the case of *Clover, Clayton & Co.* v. *Hughes.*" [3]

In *Lochgelly Iron and Coal Co.* v. *Walkenshaw* [33] it was held by the House of Lords that to entitle a workman to compensation for incapacity due to "an attack of cardiac insufficiency" it was enough that "the hard work on which the claimant was engaged induced the breakdown of his enfeebled heart."

In *Whittle* v. *Ebbw Vale, Steel, Iron & Coal Co., Ltd.*[34] the deceased was a grease boiler, aged 61, and was at the time of the accident suffering from heart disease. His doctor said in evidence that he did not advise him to go back to work, but he insisted upon going. The doctor also gave evidence that he might have died at any moment, and any strain or stooping was prejudicial to him. He was seen about his work at 5.20 a.m., and found dead at 5.40 a.m., lying over a water tank, his face being covered with water. The post-mortem examination showed that he died of heart disease. Upon these facts the county court judge held that the work upon which the deceased was engaged contributed to and accelerated his death and, applying the principles in *Falmouth Docks and Engineering Co. Ltd.* v. *Treloar* [31] and in *Patridge Jones & John Paton, Ltd.* v. *James* [32], he made an award in favour of the dependents. The Court of Appeal held that the case was distinguishable from *Barnabas* v. *Bersham Colliery Co.*[20] and the county court judge had applied the right principle, as there was evidence that the employment contributed to the death of the deceased. Slesser L.J. in a lengthy judgment examined a number of cases which I have dealt with previously commencing from the case of *Clover, Clayton & Co., Ltd.* v. *Hughes* [3] and then said (at page 1230) with reference to the case of *Partridge Jones & John Paton, Ltd.* v. *James* [32]:—

"I find the facts of that case — although, of course, the facts of no two cases exactly agree — to be very similar to the facts of the present case. In both cases there is a finding that the man might have died at any moment; in both cases there is evidence that the work he was doing was work of a laborious nature, and that it accelerated or produced the workman's death. The only difference in the two cases that I can see is that in the case of *Partridge Jones & John Paton, Ltd.* v. *James*, the man died, as it is said, immediately, or ten minutes

after, he had actually last worked; whereas in the present case there is an interval of 25 minutes; . . ."

His Lordship went on to say (at page 1234) :—

"At any rate, I think there are several factual elements in this case which justify the county court judge in coming to the conclusion, even perhaps apart from these authorities, that this death happened in the course of his employment. There is this distinction between this case and the case of *Barnabas* v. *Bersham Colliery Co.*[20] that in that case the man was found having an apoplectic fit, but I do not think there is any reason to suppose that in that case at the moment when the man was found he was found in a place where he would actually have to be to do the particular work on which he was engaged; whereas in the present case the tank where he was found is the place where he would very likely be shortly before the end of his shift."

In *Moore* v. *Tredegar Iron & Coal Co., Ltd.*[35] a collier left home one evening apparently in good health. His work during the night was heavier than his usual work, but not heavier than what he was occasionally required to do. A quarter of an hour after he had ceased work, and after he had walked some 190 yards from his place of work, on his way to the surface, he was found unconscious on the ground. On being helped up, he recovered and walked a short distance but collapsed again and died. A post-mortem examination showed disease of the heart. The widow claimed compensation. The county court judge stated that the question for his consideration was whether the work which the workman had been doing at any time on that night caused or contributed to his death or in any way accelerated it, and found on the evidence that there was nothing abnormal in the work which would be likely to cause or accelerate death. He was unable to find that there was any particular strain which did actually cause death and he was constrained to hold that there was nothing unusual likely to contribute to death. The absence of abnormality of work and the length of time between cessation of work and death led him to the conclusion that it was the workman's idiopathic condition which would in any event have caused, and did in fact cause, his death. He made his award for the employer. On appeal by the widow the Court of Appeal held that the county court judge had failed to answer the question which he had correctly put to himself for consideration and had misdirected himself in limiting his enquiry to something special or abnormal in the work. On the evidence, the workman's death had been accelerated by his normal work on the night in question and there must be an award in favour of the widow. Greer L.J. said (at page 365) :—

"It has been necessary and desirable to consider a number of cases, and in my judgment the court has to follow the law as it has been laid down in the latest decision of the House of Lords namely, *James* v. *Partridge Jones & John Paton, Ltd.*[32] If the county court judge had followed that law he ought to have held it established that this man's ultimate relapse was caused partly by the work which he did and partly by the fall which he had had, ultimately resulting in his death, which would not have happened if it had not been for the strain of his ordinary work. That brings this case exactly within *McFarlane* v. *Hutton Bros.* (*Stevedores*), *Ltd.*[30]

In *Oates* v. *Earl Fitzwilliam's Collieries Co.*[36] a workman, suffering from disease of the heart, became seriously ill while at his work and died shortly afterwards. The county court judge refused to make an award in favour of his widow, on the ground that she had failed to establish that personal injury had been caused to the workman by accident arising out of and in the course of his employment. There was no finding of fact that the workman's death was due to the progress of the disease or that the man's work accelerated the death. The Court of Appeal held that although there was no evidence of any strain or similar cause other than that arising out of the man's ordinary work, the death or injury might be due to an accident arising out of his employment. It was essential that there should be evidence of a physiological injury or change occurring in the course of a man's employment by reason of the work on which he was engaged at or about the time of his death. Clauson L.J. delivering judgment of the court said:—

"For the widow, it was suggested that the judge's decision was based on the view that the widow has to point to specific injury arising from some specific act, and, indeed, the insistence at the trial on the importance of the question whether the rupture of the aortic cusp occurred (as the widow in her particulars claimed) on the day of death or, as the judge found, 3 weeks earlier does lend some colour to the suggestion that the case was being dealt with as if it turned necessarily on the question whether or not a specific injury arising from some specific act could be shown to have taken place. In our judgment, it is clear since the decision of the House of Lords in *Partridge Jones & John Paton, Ltd.* v. *James* [32] that such a method of dealing with the case would be erroneous, and, if it was in fact so dealt with, the decision cannot stand. In our judgment, a physiological injury or change occurring in the course of a man's employment by reason of the work in which he is engaged at or about that moment is an injury by accident arising out of his employment, and this is so even though the injury or change be occasioned partly, or even mainly, by the progress or development of an existing disease if the work he is doing at or about the moment of the occurrence of the physiological injury or change contributes in any material degree to its occurrence. Moreover, this is none the less true though there may be no evidence of any strain or similar cause other than that arising out of the man's ordinary work. This appears to us to be the result of the decision of the House of Lords in *James' case*, as expounded in the opinion of Lord Buckmaster. The applicant in *Ormond* v. *Holmes & Co. Ltd.*[14] failed because the stroke which was the injury or accident on which he based his claim was found neither to have been caused, nor to have been contributed to, nor to have been accelerated, by the work in which he was engaged when it occurred. In *Miller* v. *Carntyne Steel Castings Co., Ltd.*,[37] the workman would have succeeded if he had collapsed during his work under the strain of his work, but he failed because his incapacity was found to be due solely to the progress of his disease, and there was no evidence of a physiological injury or change occurring

at any particular moment under the stress of the work on which he was engaged at or about that moment."

I have now dealt with most of the English leading cases on the subject and set down such principles of law as, to my understanding of them, are to be gathered from such authorities. Before concluding the list of such authorities I propose to look in the direction of the other hemisphere and examine two cases which went up to the High Court of Australia. The first of such cases is the case of *Hetherington* v. *Amalgamated Collieries of W. A. Ltd.*[38] in which a miner was found dead during his working hours in a roadway between the coal-face where he had been working and the surface of his employer's mine. The worker was in the act of returning to the surface and immediately prior to his death had ascended a series of steps 60 yards in length and walked along an incline thereafter for about one-quarter of a mile to the place where his body was found. A post-mortem examination disclosed that his coronary artery was in an advanced state of arterio-sclerosis and that an occlusion or obliteration of that artery caused his death. On a claim by the worker's widow for compensation under the Workers' Compensation Act 1912-1934 (W.A.) the magistrate found on the medical evidence that the worker was likely to die at any time as a consequence of the disease but that the exertion which he had undertaken and the conditions in which he had been immediately prior to his death had contributed to or accelerated his death. On appeal, the full Court of Western Australia set aside the order in favour of the widow on the ground that "there was no incident or occurrence during Hetherington's day's work which could be described as an accident" and that "there was no real proof that the occlusion of the coronary artery which was the cause of his death arose from the deceased's work at all". On further appeal by the widow to the High Court of Australia, it was held that on the magistrate's finding (there being evidence to support it) the worker's death was the result of personal injury by accident suffered in the course of his employment within the meaning of section 6(1) of the Act. Latham C.J. based his judgment on the English cases starting from the leading case of *Fenton* v. *Thorley & Co. Ltd.*[1] and ending with the case of *Oates* v. *Earl Fitzwilliams Collieries Co.*[36] and said (at page 327):—

"The only difference on the facts between *Moore's case* [35] and the present case seems to be that in *Moore's case* the deceased miner was seen to fall and collapse, whereas in the present case he was discovered in a state of collapse and death."

The second Australian case is the case of *Adelaide Stevedoring Co. Ltd.* v. *Forst,*[39] in which a waterside worker and winchman was engaged in discharging cargo from a liner. He was a powerful and vigorous man, and, until his collapse, on the day of his death, he appeared to be in normal health. On that day, after performing two tasks which involved muscular exertion, he collapsed and shortly afterwards died. On an application by his widow for compensation under the Workmen's Compensation Act 1932-1935 (S.A.), the arbitrator, after hearing medical evidence which disclosed a conflict of opinion, found that the workman's death was due to coronary thrombosis, but that death from coronary thrombosis could not generally be related to exertion and therefore that the workman's death could not satisfactorily be said to have been caused by his exertion. He accordingly found that the death was not the result of injury by accident arising out of and in the course of the employment within the meaning of section 4 of the Act. On appeal, the Supreme Court of South Australia (which, under section 41 of the Act, had power to rehear the case and to decide questions of fact as well as of law) decided that, although the expert evidence was not conclusive, it showed that physical exertion was commonly, though not invariably, the inciting cause of coronary thrombosis, and that, having regard to the probabilities, the proper conclusion was that the workman's exertion was in fact the cause of it in this case. The court therefore set aside the finding of the arbitrator and made an affirmative finding that the workman's death was the result of an injury by accident arising out of and in the course of his employment. On further appeal, the High Court of Australia held that on the evidence the finding of the Supreme Court was justified and should not be disturbed. Rich Acting C.J. said at page 563:—

"In my opinion the conclusion of the Full Court is correct. I am greatly impressed by the sequence of events. The deceased, who had arrived at an age when arterio-sclerosis and atheroma afflict mankind, was a stevedore's labourer. On the day of his death he climbed up the jib of the crane and lay prone on the crane with his arms outstretched, trying to replace a wire which had come off the gin. He failed to do so, returned to the deck and for some time, with his arms in a position raised over his head, helped in holding up a wire rope. Immediately after performing this task he collapsed. What weighs so much with me is the fact that he was brought to a standstill, as an ordinary lay observer would think, by the exertion he had undergone: Cf. *Partridge Jones and John Paton Ltd.* v. *James.*[32] I do not see why a court should not begin its investigation, i.e., before hearing any medical testimony, from the standpoint of the presumptive inference which this sequence of events would naturally inspire in the mind of any common-sense person uninstructed in pathology. When he finds that a workman of the not-so-young standing attempts in a posture calculated by reason of the pressure on the stomach to disturb or arrest the rhythm of the heart a very strenuous task not forming part of his ordinary work and then collapses almost immediately and dies from a heart condition, why should not a court say that here is strong ground for a preliminary presumption of fact in favour of the view that the work materially contributed to the

cause of death? From this standpoint the investigation of physiological and pathological opinion shows no more than (that) the current medical views find insufficient reason for connecting coronary thrombosis with effort. Be it so. That to my mind is not enough to overturn or rebut the presumption which flows from the observed sequence of events. If medical knowledge develops strong positive reasons for saying that the lay common-sense presumption is wrong, the courts, no doubt, would gladly give effect to this affirmative information. But, while science presents us with no more than a blank negation, we can only await its positive results and in the meantime act on our own intuitive inferences. The conclusion of the special magistrate may prove to be in advance of its time, but, as matters stand, I prefer that of the Full Court."

I have now reached the stage at which it is possible to take a mental stock of the rules to be gathered from the numerous authorities which I have cited with a view to reaching an understanding of the point of law involved in this appeal. As more than one learned judge has said, it is not easy to find a precise path among such authorities, but to my mind the *dictum* of Lord M'Laren in the Scottish case of *Stewart* v. *Wilsons and Clyde Coal Co. Ltd.*[2] uttered as far back as 1902 serves as a beacon to illuminate the path through the labyrinth of these authorities. To use the words of Rich J. in *Hetherington's case.*[37] "I refrain from adding any *dictum* or formula of my own to the catalogue to be found in the chain of cases which provoke appeals and harass the minds of counsel and judges." In the words of Lord Dunedin in *Trim Joint District School Board of Management* v. *Kelly,*[40] "the ultimate criterion must always be found in the words of the Act itself, and not in tests, explanations, or definitions given by judges, however eminent." Some of the rules which I have stated above are not directly relevant to this appeal, but the others are very much in point. No useful purpose will be served in my setting out a summary of such rules, but bearing those rules in mind and considering that the facts in at least some of those cases are not very different from the facts relating to this appeal, the solution here lies in the following words of Slesser L.J. in *Ormond's case* [14] at page 801:—

"If a man be incapacitated solely by reason of the fact that he is suffering from a disease, the incapacity is not due to a personal injury by accident. It may be possible, in certain cases, to attribute the contraction of the disease to an accident, that is to say, to some unlooked-for mishap, or untoward event, and, when that can be done, and the disease results in an incapacity, it may rightly be said that the incapacity is one caused by that accident. But the disease itself is not an accident, in the popular and ordinary sense of that word. If a man should die suddenly of heart disease, without any contributing cause, no one would say that his death was accidental or due to an accident. In some cases, however, incapacity is caused by a disease in conjunction with a contributory cause. A man, for instance, may be suffering from a disease of the heart that sooner or later is bound to cause his death. His death, however, from the disease may be accelerated by some particular, though not necessarily an unusual, act of exertion. In those cases, the death or incapacity can properly be said to be caused by an accident, and, where the contributing cause is furnished by and in the course of the injured workman's employment, he is entitled to compensation under the Act."

I now come to the grounds of appeal in this case, the first of which is that the learned arbitrator erred in law in not taking into account that the onus of proving that the death of the deceased workman was the result of injury by accident arising out of and in the course of his employment lay on the respondent who was the applicant in the arbitration proceedings. Mr. Shanker's contention, as far as this ground is concerned, is that for an applicant to succeed it must be shown that the workman suffered injury which was caused by some specific event, and that in this case there was no evidence to show any specific act which the deceased was doing when he fell. In other words, he was relying on the old doctrine that there must be a specific event and a specific injury. That doctrine, however, was swept overboard by the House of Lords in the *Clover, Clayton case* [3] and in the more recent case of *Partridge Jones and John Paton Ltd.* v. *James*[32], and there has been no reversion to that doctrine in the later and more recent cases as contended by Mr. Shanker. From the evidence which the arbitrator had before him in this case, it would seem clear that the deceased reported for work as usual at 6 a.m., arrived at the place of his work at about 6.30 a.m. when he commenced digging in the drain, using a changkol and a parang, was working when he talked to the Chinese *kepala* soon after 6.30 a.m. when he complained of being giddy and collapsed at his place of work at about 7 a.m. On that evidence he found that the deceased was at the relevant time and place working with other labourers, clearing a drain in the estate with a changkol, and that after about half an hour in the course of his work he suddenly collapsed and died. It is true no one saw what he was doing at the actual time of his sudden collapse, but from the evidence that he had started working and that he collapsed at his place of work, was he not entitled to draw the inference, which he did, that the workman collapsed in the course of his work? Everything in fact happened at his place of work. Even assuming that he had sat down in the course of his work by reason of a fit or giddiness, can it be argued that his work did not contribute to or accelerate his death? After all, in a number of English cases, which I have dealt with, death did not take place immediately after the collapse or when he was actually engaged in doing some work. The emphasis is on the ordinary strain of work and not on any exceptional strain, and it is not material whether he collapsed when he was in the act of raising or bring down his changkol. In the circumstances,

I do not see how it can be argued that the respondents as applicants in the arbitration proceedings had not discharged the onus which lay upon them. This ground, therefore, must fail.

The second ground of appeal is that there was no evidence upon which the learned arbitrator was justified in holding that death was due to coronary thrombosis and heart failure precipitated by the work which the deceased was performing immediately before his death. I do not agree. The arbitrator accepted the evidence of Mr. Ng Cheuk Heng as to the cause of death by heart failure, and he believed the doctor's evidence that the exertion of the work had contributed to the death of the deceased. It will be observed that even Dr. Balasingam agreed that if there are signs of old attacks of coronary thrombosis, large or small, the patient is predisposed to further attacks and that this may be a case of coronary thrombosis. His opinion that he could not say whether the cause of death was coronary thrombosis or not was clearly based on the absence in the post-mortem report of any mention or indication of atheroma or blood clots. He said that if he conducted a post-mortem in a case indicative of coronary thrombosis, in the absence of evidence of atheroma, he would cut the blood vessels transversely to look for the blood clot, but against that we have the opinion of Mr. Ng that the possibility of death by coronary thrombosis did not occur to Dr. Mitra who carried out the post-mortem. In the circumstances it is not surprising that there was no mention of atheroma or blood clots in the post-mortem report. But the indication as to the likely cause of death is furnished by the two old infarction scars. All this satisfies me, as it appears to have satisfied the arbitrator, that the functional disturbance occasioned by the work of the deceased was intimately connected with and contributed to the workman's death. There is therefore no substance in this ground of appeal either.

The third ground of appeal is that the medical evidence indicated the possibility that the work performed by the deceased since he had previous attacks of coronary thrombosis would probably have resulted in a steady deterioration in his heart ultimately leading to his death, and that where death is due to deterioration of a physical condition over a period of time as a result of work performed there is no accident within the meaning of the Ordinance. This ground in my opinion is also without any substance. It has been held again and again that the fact that a man's condition predisposes him to a cardiac failure is immaterial where such failure takes place in the course of and is caused by his work, unless it can be shown that the work itself did not contribute to or accelerate the death. In this case the learned arbitrator believed that the exertion of work contributed to the death of the deceased and the evidence before him including the evidence of Mr. Ng Cheuk Heng, which he accepted, supported that finding.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Shearn, Delamore & Co.*; *P. G. Lim.*

KAMUNING (PERAK) RUBBER & TIN CO. LTD. v. ABRAHAM

[O.C.J. (Hepworth J.) September 12, 1964]

[Alor Star — Civil Suit No. 157 of 1964]

Landlord and Tenant — Premises belonging to employer occupied by employee — Licence to use premises free of charge — Termination of employment — Injunction.

Master and Servant — Occupation of premises by servant — Termination of employment — Injunction to restrain occupant.

The plaintiffs the owners of a bungalow in Sungei Patani, Kedah allowed the defendant who was employed by them as a senior conductor to occupy it free of charge for the effectual performance of his duties. The services of the defendant were terminated and one month's pay in lieu of notice was offered to him. The defendant was also asked to vacate the bungalow. He failed to do so and the plaintiffs commenced an action for an order that the defendant quit and vacate the bungalow or for an injunction to restrain the defendant and all persons holding through or under him from remaining in or upon the bungalow.

Held: the defendant had no defence to the action and this was a proper case in which an injunction should be granted.

Cases referred to:—

(1) *Janisse* v. *Livesey* [1944] 4 D.L.R. 73.

(2) *Collison* v. *Warren* [1901] 1 Ch. 812 at p. 817.

(3) *Canadian Pacific Railway* v. *Gaud & Ors.* [1949] 2 K.B. 239 at p. 241.

(4) *Thomson* v. *Park* [1944] K.B. 408 at p. 409.

MOTION FOR INJUNCTION.

A. Jayadeva for the plaintiffs.

Lim Kean Chye for the defendant.

Hepworth J.: The plaintiffs are and at all material times were the legal owners of the bungalow situated on the land comprised in Lot No. 1502 Grant No. 29404, Mukim of Sungei Patani in the State of Kedah, and of the said land and all other lands comprising K. M. S. Estate, Sungei Patani.

The defendant was employed by the plaintiffs as a senior conductor and was allowed to occupy the said bungalow for the effectual performance of his duties as such. The defendant was allowed to occupy the said bungalow free of charge.

On the 6th January, 1964, the manager of